3. In an action against a railroad company for injuries for being struck by a locomotive while plaintiff was walking on the track, evidence *held* to show plaintiff guilty of contributory negligence.

HARRISON v. THOMAS.

January 12, 1905.

[49 S. E. 485.]

TAX SALE—RIGHT TO DEED—NOTICE TO PERSON ENTITLED TO REDEEM.

1. Under Acts 1901–2, p. 779, c. 658 [Ann. Code 1904, p. 320], re-enacting Code 1887, sec. 655, providing that after the two years from sale of land for taxes allowed for redemption, the purchaser of the land not redeemed shall obtain from the clerk of court a deed, and amending it by providing that a deed shall not be made to any such purchaser till after he has given to the person in whose name the land stood at the time of the sale, and to certain other persons, four months' notice of his said purchase, and that the person entitled to redeem the land shall have the right to redeem it before expiration of the four months, though such time extend beyond the two years. The notice is not required to be given in a case where the two years for redemption had expired before the amendment came into effect.

RICHMOND PASSENGER & POWER CO. v. STEGER.

January 12, 1905.

[49 S. E. 486.]

APPEAL—FINDINGS OF FACT.

1. The finding of the jury a to contributory negligence, depending on questions of fact as to which there is conflicting evidence, will not be disturbed on appeal.

CHESAPEAKE & O. RY. CO. v. SMITH.

January 12, 1905.

[49 S. E. 487.]

CARRIERS—INJURIES TO PASSENGERS—ALIGHTING FROM CARS—WAYS TO STATION—CONTRIBUTORY NEGLIGENCE—ACTIONS—TRIAL—JURORS—BIAS.

1. Where members of a jury on their *voir dire* stated that they were friends of the plaintiff, and that he was their family physician, but that such relation would have no influence on their verdict, they were not disqualified on the ground of implied bias.

2. Plaintiff returned to his home at night. As the train approached plaintiff's station, the brakeman opened the door of the rear car, in which plaintiff was riding, and called the station, and plaintiff and the other passengers got off on the ground, not knowing that they were 80 yards from the depot. The night was dark, and plaintiff, after the train left, in walking along the unlighted track toward the depot, fell into an unguarded cattle guard, and was injured. *Held*, that the railway company was guilty of negligence.

3. Plaintiff was not guilty of contributory negligence in not going through the cars between him and the station platform before getting off, or in not finding the conductor, who was at the front end of the train, and requesting him to move the train until the rear car reached the platform.

NORFOLK & W. RY. CO. v. CHEATWOOD'S ADM'X.

January 12, 1905.

[49 S. E. 489.]

MASTER AND SERVANT—RAILROADS—DEATH BY WRONGFUL ACT——CONTRIBUTORY NEGLIGENCE—KNOWLEDGE OF DANGEROUS APPLIANCES — CONSTITUTIONAL PROVISION—CONSTRUCTION—INSTRUCTIONS.

1. In an action against a railroad company for the death of a "hostler," injured while riding on a tender in a switchyard, evidence *held* to justify submission to the jury of the question whether deceased was at his post of duty at the time of the injury.

2. Where a railroad company maintained a building in its switchyard at such distance from the track that a person riding on a step at the side of the tenders ordinarily used in the yard could pass in safety, the use of a tender so large that a person riding as usual would be crushed against the building was negligence.

3. In an action for death by wrongful act, an instruction that plaintiff is entitled to a sum equal to the probable earnings of deceased considering his age, business capacity, experience, habits, health, energy and perseverance, is correct as to the element of damage referred to.

4. Where a constitutional provision of another state is incorporated in the Constitution of this state, the construction placed upon the provision by the courts of such other state before its adoption here must be adopted in this state.

5. Const. sec. 162 [Va. Code 1904, p. cclix], and Acts 1901–2, p. 335, c. 322 [Va. Code 1904, p. 707, sec. 1294k], providing that a railroad employé's knowledge of defects in appliances shall not bar a recovery for injuries caused by such defects, does not do away with the defense of contributory negligence, or render knowledge of defects unimportant in determining the question of contributory negligence, but merely renders knowledge alone insufficient to defeat recovery.

6. Under these provisions the servant's knowledge of defects is to be considered in connection with all the other evidence in determining whether the servant used due care, but, as such knowledge will not alone defeat a recovery, an instruction that the defense of contributory negligence is unaffected by the statutes is too broad.

7. Instructions that defendant is entitled to make the defense of contributory negligence, and defining what constitutes contributory negligence, are sufficient to preserve defendant's right to this defense.

8. Where a railroad employé has ridden on the side of tenders past a building so close to the track that there was barely room for his body, he was not guilty of contributory negligence in trying to ride past on the side of a larger tender, unless he knew it was larger.